IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 33445 of 2006(F)
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CMA..5/2006 of SUB COURT, VADAKARA
OS..85/2000 of MUNSIFF COURT, VADAKARA
(IA.874/2005)
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PETITIONER:
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NIDUMBRATH ARAVINDAKSHAN,
S/O. BALAKRISHNA KURUP (LATE), AGED 41 YEARS,
DOCTOR, RESIDING AT PURATHOOTTAYIL, PONMERI
AMSOM, PARAMBIL DESOM, VADAKARA TALUK.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENTS:
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1. NIDUMBRATH LAKSHMIKUTTY AMMA,
D/O. BALAKRISHNA KURUP, AGED 60 YEARS,
SWASTHAM, LAKSHMI NIVAS, VATAKARA AMSOM,
DESOM, VATAKARA TALUK.

2. NIDUMBRATH JYOTHI KUMAR, S/O.
LAKSHMIKUTTY AMMA, AGED 41 YEARS,
ADVOCATE, LAKSHMI NIVAS, VATAKARA AMSOM AND
DESOM, VATAKARA TALUK.

3. NIDUMBRATH SINDHU, D/O. LAKSHMIKUTTY
AMMA, AGED 36 YEARS, SWASTHAM, LAKSHMI NIVAS,
VATAKARA AMSOM AND DESOM, VATAKARA TALUK.

4. NIDUMBRATH SANDHYA, D/O. LAKSHMIKUTTY
AMMA, AGED 33 YEARS, DOCTOR, LAKSHMI NIVAS,
VATAKARA AMSOM AND DESOM, VATAKARA TALUK.

5. NIDUMBRATH RAMAKRISHNAN,
S/O. BALAKRISHNA KURUP, AGED 46 YEARS,

PONMERI AMSOM, PARAMBIL DESOM, VADAKARA TALUK,
ADVOCATE KUNNUMMAKKOOL.

6. ELAVANA LATHA AMMA, D/O. GOVINDANKUTTY
KIDAVU, AGED 46 YEARS, SWASTHAM,
KOZHUKKALLUR AMSOM AND DESOM,
KOYILANDY TALUK.

7. ELAVANNA MANJUSHA, D/O. VENUGOPALA
KURUP, AGED 27 YEARS, SWASTHAM,
KOZHUKKALLOOR AMSOM AND DESOM,
KOYILANDY TALUK.

8. ELAVANNA ANJANA, D/O. VENUGOPALA KURUP,
AGED 19 YEARS, SWASTHAM, KOZHUKKALLUR AMSOM
AND DESOM, KOYILANDY TALUK.

BY ADV. SRI.C.VALSALAN
SRI.K.S.MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the order dated 11-09-06 in I.A.874/05 in FDIA 2730/04 in OS 85/00 before the Munsiff Court, Vadakara.

Ext.P2:- True copy of the judgment dated 5-12-06 in CMA 5/06 before the Sub Court, Vadakara.

/true copy/

P.S. To Judge

**M.Sasidharan Nambiar,J.**

**W.P.(C) No.33445 of 2006**

**Dated, this the 5th day of January, 2007**

**JUDGMENT**

Third defendant in O.S. 85/00 on the file of Munsiff Court, Vadakara is the petitioner. Respondents 1 to 4 are plaintiffs and other respondents other defendants in the suit. A preliminary decree for partition was passed. A final decree application is pending. The preliminary decree is now challenged in Second Appeal pending before this court. In the final decree application I.A.874/05 was filed by the plaintiffs to appoint a receiver or a commissioner for the plaint schedule property. Under Ext.P1 order, learned Munsiff appointed a commissioner to sell the usufructs from the decree schedule property for a period of one year. It was challenged before Sub court, Vadakara in CMA No.5/06. Learned Sub Judge dismissed the appeal. It is challenged in this

petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner and respondents were heard.

3. The preliminary decree is under challenge in second appeal. The final decree application is pending. Under Ext.P1 order, learned Munsiff appointed a Commissioner to sell the usufructs for one year from the decree schedule properties. Learned counsel appearing for petitioner submits that petitioner is in possession of the properties and he is prepared to deposit the income as assessed by the Commissioner. Learned counsel appearing for the plaintiffs submitted that plaintiffs are prepared to deposit double that amount and they be permitted to take the usufructs.

4. On hearing the learned counsel on both sides, I do not find that there is any necessity to appoint a commissioner to auction the usufructs. The court may auction the right to collect the usufructs, till the final decree is

passed, in between the sharers. Exts.P1 and P2 are therefore quashed. Learned Munsiff is directed to auction the right to collect the usufructs from the decree schedule properties in between the sharers.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

***Tpl/-***